

# **FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**THURSDAY**

**JUNE 6, 2013**

**8:00 A.M.**

**PLANNING DEPARTMENT CONFERENCE ROOM**

## **MEETING NOTES**

PRESENT:

JOE GILLIS, CHAIRMAN

LEN HOUSE, VICE CHAIRMAN

WILLIAM SULLIVAN, TREASURER

TODD RULISON, SECRETARY

FRAN REED, MEMBER

JOSEPH SEMIONE, MEMBER

GEORGE BEVINGTON, MEMBER

JAMES MRAZ, EXECUTIVE DIRECTOR

KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC

RALPH OTTUSO, LIAISON, ECONOMIC DEVELOPMENT COMMITTEE

MIKE REESE, PRESIDENT/CEO, FULTON COUNTY CENTER FOR REGIONAL GROWTH

LEADER HEARALD

### **I. MINUTES FROM MARCH 19, 2013 MEETING:**

MOTION : Accept as presented.  
MADE BY : Todd Rulison  
SECONDED : Bill Sullivan  
VOTE : Unanimous

### **II. BUDGET REPORT:**

MOTION : Accept as presented.  
MADE BY : George Bevington  
SECONDED : Len House  
VOTE : Unanimous

### **III. COMMITTEE REPORTS:**

#### **A. Nominating Committee:**

- No report.

#### **B. Audit Committee:**

- No report.

#### **C. Governance Committee:**

- Governance Committee has developed Discretionary Funds Policy that will be discussed under New Business.

#### **D. Finance Committee:**

- No report.

### **IV. OLD BUSINESS:**

#### **A. Tryon Technology Park and Incubator Center Project:**

##### **1. Status Report:**

- The IDA's requests for additional information and clarifications were sent to OGS/ESD on April 4, 2013.

##### **2. Road Construction Project:**

- Fulton County obtained a \$2.0 million grant from ESD to install new water and sewer lines and reconstruct a portion of the existing interior access road.
- Design work on hold until title to property has been deeded to IDA.

IDA DISCUSSION: Jim Mraz reported that the IDA has not received back the additional information and clarifications that was requested of OGS/ESD on April 4, 2013. Kara Lais stated that the two (2) attorneys that she has been dealing with are attempting to collect the additional information. She stated they have been responsive to the IDA's requests and agreed that the IDA was owed additional information. She stated that she is hopeful that this information can be received soon.

With respect to the road construction project, Jim Mraz stated that there is a chance that this project will not commence in 2013. He stated that this project cannot proceed until the property transfer is complete. He stated that if the transfer takes much longer, it is likely that the project will have to be started in 2014 instead of 2013 as had originally been planned.

Jim Mraz recommended that an IDA Committee be established to initiatives and strategies the IDA should pursue once it receives title to Tryon. He stated, for example, the Committee should discuss options for income generation. In addition, the Committee would need to discuss maintenance issues like the maintenance of buildings and the cutting of grass. Jim Mraz asked if there were any IDA members willing

to volunteer for this Committee. The following agreed to serve on this Committee: Joe Gillis, Joe Semione, Todd Rulison and George Bevington.

**V. NEW BUSINESS:**

**A. CIC Sublease Approval:**

1. Background:
  - IDA's Policy 12: Approval of Subleases requires the IDA to approve all subleases on properties the IDA owns.
2. Application for Sublease Approval:
  - IDA has received from the CIC an Application for Sublease Approval.
  - The Application requests the IDA's approval of a sublease with Yusen Logistics for the IDA's property at 160 Enterprise Drive in the Johnstown Industrial Park.
  - Sublease Term: May 1, 2013 to May 1, 2015
  - Area Subleased: 90,000 sf
  - Total Building Size: 113,400 sf
  - IDA's policy requires Annual Compliance Fee of \$500 payable on January 15<sup>th</sup> of each year. Fee paid by CIC.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda regarding the CIC's Application for Sublease Approval. Joe Gillis asked if the company is new to the area. Mike Reese stated that the company is not new to the area but new to the Johnstown Industrial Park. Joe Gillis asked if the spaces Yusen is not leasing could be leased out by the CIC to another company. Mike Reese stated that the only remaining space that could be leased out would be the office areas of the building. Jim Mraz asked if there were any further questions. There were none.

**IDA ACTION:**

MOTION: To approve the CIC's Application to enter into a 2-year sublease with Yusen Logistics for the IDA property at 160 Enterprise Drive in the Johnstown Industrial Park.

MADE BY: Todd Rulison  
SECONDED: Joseph Semione  
VOTE: Unanimous

**B. Proposed Policy 13: Discretionary Funds Policy:**

1. Background:
  - The Authority Budget Office (ABO) now requires Public Authorities to adopt a Discretionary Funds Policy to help ensure that funds only be expended for purposes that advance an Authority's mission and objectives.
  - The ABO offers a Model Policy for Authorities to use. The Executive Director drafted a Discretionary Funds Policy based upon the ABO's Model and reviewed it with the Governance Committee.

2. Governance Committee Recommendation:

- The Governance Committee has reviewed the draft Policy and recommends that it be adopted.
- See handout.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated this proposed Policy has been reviewed by the Governance Committee. The Governance Committee recommends that it be adopted. Kara Lais was asked if she has reviewed the proposed Policy. Kara Lais stated she had and said she found it acceptable. Jim Mraz asked if there were any further questions or comments on the form and content of the proposed policy. There were none.

IDA ACTION:

MOTION: To approve proposed Policy 13: Discretionary Funds Policy as recommended by the Governance Committee.

MADE BY: Fran Reed

SECONDED: Joseph Gillis

VOTE: Unanimous

**C. Proposed “SMART Waters” System:**

1. Background:

A. Water:

At present, there are six (6) municipal water systems operating in Fulton County:

1. City of Gloversville
2. City of Johnstown
3. Village of Broadalbin
4. Village of Mayfield
5. Village of Northville
6. Sacandaga Park in the Town of Northampton

B. Wastewater:

At present there are five (5) municipal wastewater collection and treatment systems operating in Fulton County:

1. City of Gloversville
2. City of Johnstown
3. Village of Broadalbin
4. Village of Mayfield
5. Sacandaga Park

C. At present, the existing delivery approach of providing water and sewer services through the operation and maintenance of six (6) separate municipal water systems and five (5) wastewater collection and treatment systems has its challenges. Each system

operates independently of each other and has its own distinct service area. No long-term strategy or plan exists for providing municipal water and sewer services to those areas in the County that desire or need these services.

2. Proposed Fulton County “SMART Waters” System:

Community leaders believe there is a better, more efficient model to provide municipal water and wastewater services to its residents and businesses. Fulton County believes that a regional approach to delivering water and wastewater services would be a more efficient model than the existing delivery approach. This regional approach would be known as the Fulton County “SMART Waters” System.

The Fulton County Board of Supervisors is seeking proposals from qualified consultants to test the following hypothesis:

**The operation and maintenance of Fulton County’s “SMART Waters” System would be a more efficient model to deliver water and sewer services and to promote economic development in the Region than the existing approach of operating and maintaining independent systems.**

3. Potential Models to be Evaluated:

**Model 1: Create a Fulton County Water and Sewer Authority.**

Option 1: The County Authority would purchase existing water and sewer systems in Fulton County to operate and administer Fulton County’s “SMART Waters” System.

Option 2: The County Authority would purchase water and sewer capacity from existing water and sewer systems in Fulton County and use these capacities to operate and administer Fulton County’s “SMART Waters” System.

**Model 2: The existing Fulton County Water and Sewer Agency creates a Countywide Water and Sewer District.**

Option 1: The Agency would purchase existing water and sewer systems in Fulton County to operate and administer Fulton County’s “SMART Waters” System.

Option 2: The Agency would purchase water and sewer capacities from existing water and sewer systems in Fulton County to operate and administer Fulton County’s “SMART Waters” System.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He provided a brief explanation of the proposal being advanced by the Fulton County Board of Supervisors to explore the feasibility of implementing a Fulton County “SMART Waters” System. He stated the proposal would be to create a County-run regional water and sewer system. He provided an explanation as to why Fulton County is pursuing this initiative. He stated the County is looking to hire a professional consultant to prepare a model for Fulton County’s “SMART Waters” System. He explained that once the model was created, discussions would then commence with the existing municipalities who own water and sewer systems to determine whether any existing municipal water and sewer system would be willing to either sell their system to the County or to sell capacity.

Joe Gillis asked if the study will determine what projected revenues the model would have for the Cities. Jim Mraz stated, “No.” He stated that would be ascertained after the study was completed and discussions commenced with each municipality regarding their potential interest in selling their system and/or services. He stated that it would really be up to the municipalities to review and ascertain what the potential costs and expenses would be associated with either selling their system or selling capacities to the County.

A question was asked on what would happen if no one wanted to sell their system or capacities to the County. Jim Mraz stated that another option would be for the County to go out and develop its own water and sewer capacities.

Jim Mraz stated that he would keep the IDA informed on the progress of this initiative.

**D. New Reporting Requirements for IDA’s:**

- Part J of Chapter 59 of the Laws of 2013 amended the General Municipal Law (GML) and the Public Authorities Law to make several reforms to how Industrial Development Agencies and Authorities (IDAs) provide state and local sales and use tax exemption benefits.
- The following is a summary of these new requirements:

a. Pre-2008 Retail Prohibition	No financial assistance shall be provided by IDAs for any project where: (i) Facilities or property are primarily used in making retail sales to customers who personally visit such facilities, and (ii) That facility or property constitutes more than one-third (1/3) of the total project cost.
b. Retail Project Exemptions	1. A tourism destination project. 2. A project in a highly distressed area. 3. A project that provides a product or service to the area that otherwise would not be available.

c. Permanent Private Sector Jobs Requirement	<p>A project authorized under either Retail Exemption 2 or 3 from above must not be approved unless the agency shall find, after a Public Hearing, that undertaking the project will serve the public purpose by:</p> <ul style="list-style-type: none"> <li>(i) Preserving permanent, private sector jobs, or</li> <li>(ii) Increasing the overall number of permanent, private sector jobs in the State.</li> </ul> <p>Where the agency makes such a finding, prior to providing financial assistance to the project by the agency, the CEO of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.</p>
d. State and Local Sales Tax Exemption Recordkeeping	IDA's must keep records of State and local sales tax exemptions provided to each project and make such records available to the Tax Commissioner upon request.
e. State and Local Sales Tax Exemption Benefit Reporting	<p>Within 30 days of providing financial assistance in the form of a State sales and use tax exemption benefit, an IDA must report to the Tax Commissioner the:</p> <ul style="list-style-type: none"> <li>(i) Amount of such benefits,</li> <li>(ii) The project to which they are being provided, and</li> <li>(iii) Any other information the Tax Commissioner may prescribe.</li> </ul> <p>Failure to provide such report will result in an IDA losing its authority to provide State sales tax abatements, until such time as the report is filed.</p>
f. State and Local Sales Tax Exemption Benefit Reporting Method	<p>As determined by the Tax Commissioner, the report may be done:</p> <ul style="list-style-type: none"> <li>(i) In combination with the form that IDAs must file with the Tax Commissioner designating agents of the IDA, or</li> <li>(ii) It may be submitted separately.</li> </ul>
g. Clawback/Recapture Provision	<p>IDAs are required to recapture State sales tax benefits awarded to a project which are:</p> <ul style="list-style-type: none"> <li>(i) In excess of the amounts authorized,</li> <li>(ii) Are for property or services not authorized, or</li> <li>(iii) A project that failed to comply with a material term or condition to use property or services in the manner required by the agreement with the IDA.</li> </ul>
h. Clawback/Recapture Provision Documentation & Use of Funds	<p>IDAs must include in their project documents and resolutions terms and conditions of these provisions.</p> <p>State sales tax benefits recaptured (including any penalties or interest the IDA imposes on such amounts) shall be remitted to the Department of Taxation and Finance within 30 days of recapturing such benefits.</p>
i. Clawback/Recapture Reporting	<p>IDAs must file an annual report with the Tax Commissioner detailing its terms and conditions related to these provisions and its activities to recapture unauthorized State sales tax benefits. The report is to be filed with Division of Budget, State Comptroller, ESD Commissioner, and legislative body of the jurisdiction served by the IDA.</p>
j. Sales Tax Exemption Certificate	The form that IDAs file with the Tax Commissioner designating agents of the IDA cannot serve as a Sales Tax Exemption certificate. Use of this form for this purpose shall be deemed a fraudulent use or an intent to evade tax.
k. Publication/Availability of Resolutions & Project Agreements	<ol style="list-style-type: none"> <li>1. An IDA shall report and make available on the Internet, without charge, copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes.</li> <li>2. It shall also provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person.</li> </ol>

1. State Sales Tax Agent Agreement Modification Reporting	Within thirty (30) days of the date an agent agreement is terminated, amended, revoked, or becomes invalid or ineffective for any reason, an IDA shall report to the Tax Commissioner on a form prescribed by the Tax Commissioner describing the reasons for such changes.
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IDA DISCUSSION: Jim Mraz stated that the Legislature adopted new requirements for IDA's to comply with with respect to providing sales tax exemptions. He stated that the Governor had originally proposed in his 2013/14 Budget to have the State takeover the decision making authority on whether sales tax exemptions could be granted to projects IDA's are involved in. He stated due to the lobbying efforts of New York State EDC and others, the Governor withdrew that proposal. However, the Legislature then adopted new reporting and oversight requirements that IDA's will now have to comply with. He stated that the next IDA project that requests a sales tax exemption will have to comply with these new requirements.

## VI. OTHER BUSINESS:

### A. Executive Session:

#### 1. Background:

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:
  - i. matters which will imperil the public safety if disclosed;
  - ii. any matter which may disclose the identity of a law enforcement agent or informer;
  - iii. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
  - iv. discussions regarding proposed, pending or current litigation;
  - v. collective negotiations pursuant to article fourteen of the civil service law;
  - vi. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
  - vii. the preparation, grading or administration of examinations;
  - viii. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.**

MOTION: To go into Executive Session to discuss, "the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof."

MADE BY : Bill Sullivan  
 SECOND : Joseph Semione  
 VOTE : Unanimous  
 TIME : 8:40 a.m.



MOTION : To go out of Executive Session.  
MADE BY : Joseph Semione  
SECOND : Fran Reed  
VOTE : Unanimous  
TIME : 9:15 a.m.

**VII. CLOSE MEETING:**

MOTION : To close the meeting.  
MADE BY : Bill Sullivan  
SECONDED : Todd Rulison  
VOTE : Unanimous  
TIME : 9:15 a.m.